

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. P-0011
Aquila, Inc., Omaha, Nebraska,)
seeking resolution of a dispute) ORDER
under *Neb. Rev. Stat.* § 57-1306.)
)
) Entered: July 11, 2006

BY THE COMMISSION

On February 17, 2006, an application was filed by Aquila, Inc., Omaha, Nebraska (Aquila) seeking a determination that the natural gas main extensions proposed by Metropolitan Utilities District (M.U.D.) to serve the planned Southern Pines subdivision (Southern Pines) are in violation of *Neb. Rev. Stat.* §§ 57-1301 et seq. M.U.D. filed an Answer on March 9, 2006.

In order to process the application, the parties conferred with Commission staff regarding a procedural schedule. As a result, a schedule for discovery, filing of witness and exhibit lists, and hearing date were agreed to by the parties.

Hearing on the matter was held on June 7, 2006, in Sarpy County. Notice of the hearing was mailed to the parties on March 26, 2006. A copy of the notice was entered into the record as Commission Exhibit B.

E V I D E N C E

The Southern Pines development is located to the southwest of the intersection of Giles Road and 168th Street and will include 114 residential lots and 2 commercial lots. The parties have stipulated that service to Southern Pines by either Aquila or M.U.D. would be economically feasible and nondiscriminatory. The parties also stipulated that M.U.D. received an application for service from the developer.

Kevin Jarosz, operations manager, testified on behalf of Aquila. Gerald Torczon, the developer of Southern Pines; Jeff Loll, director of engineering design; Peter Neddo, director of safety testified on behalf of M.U.D. Additionally, Aquila called Denise Dolezal as a rebuttal witness.

Southern Pines is bordered to the south by the Palisades subdivision which was the subject of Commission Docket No. P-0009 and is served by Aquila. Stonecrest was the subject of Commission Docket No. P-0008 and is served by M.U.D. It is located to the east of Southern Pines across 168th Street. M.U.D. has existing mains at the intersection of 168th Street and Giles Road. Aquila has an existing main to the east of the

development along 168th Street. Aquila also serves two customers on the east side of the proposed development.

M.U.D. proposes serving Southern Pines by extending the natural gas line from Meridian Street in Stonecrest across 168th Street. The internal mains at Meridian Street and 168th street are not yet built. M.U.D. would also extend its main from Giles Road and 168th Street. M.U.D.'s proposed service would require it to cross existing Aquila mains at two points.

If Aquila were to serve Southern Pines, it would do so through the existing internal mains within the Palisades subdivision and from the 168th Street main. Mr. Jarosz testified that such extensions would be "a normal extension of a gas line into a subdivision." (Hearing Transcript, 41:20-21) No significant delineation between Palisades and Southern Pines would exist. Aquila customers are located on the east side of the development, but neither would be a source of natural gas for Southern Pines.

Aquila offered testimony regarding safety concerns related to M.U.D.'s proposed extensions crossing existing Aquila mains and the prospect of having neighbors in the Palisades and Southern Pines subdivisions with different natural gas service providers. M.U.D. offered testimony to show that the crossing of mains is a customary practice, complies with applicable safety regulations, and does not raise a significant safety issue.

O P I N I O N A N D F I N D I N G S

"It is the starting point for most challenges regarding whether a proposed or existing main extension meets the public interest criteria."¹

In determining whether or not an extension or enlargement is in the public interest, the Commission considers the following criteria:

- 1) The economic feasibility of the extension or enlargement;
- 2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;
- 3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

¹ Application No. P-0005 Order at 6.

- 4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and
- 5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Neb. Rev. Stat. § 57-1303 and § 57-1305.

Because the parties have stipulated that service by either would be economically feasible and nondiscriminatory, these factors are not at issue.

Furthermore, because Southern Pines is not within the city limits or extraterritorial zoning jurisdiction of the city of La Vista, none of the rebuttable presumptions regarding the public interest outlined in Neb. Rev. Stat. § 57-1304 are present.

Orderly Development of Natural Gas Infrastructure

"[T]he orderly development requirement is not limited to scrutiny of whether a particular extension would be part of orderly growth of a particular natural gas utility; rather, the legislature requires consideration of orderly development of natural gas utility infrastructure as a whole."² Both Aquila and M.U.D. have significant infrastructure in place in close proximity to the subdivision. However, the evidence showed that M.U.D. would have to cross Aquila's existing main on 168th Street. Additionally, Aquila is currently serving the Palisades subdivision which is immediately adjacent to the proposed development with existing infrastructure capable of providing service. If M.U.D. were to provide service to Southern Pines, neighbors would have different natural gas service providers.

M.U.D. has argued that § 57-1303 does not require that the Commission determine which utility is best suited to serve Southern Pines and that the Commission need only determine whether M.U.D.'s mains are in the public interest. However, in determining whether proposed extensions contribute to the orderly development of the natural gas infrastructure, it is necessary to examine the existing infrastructure of both utilities in a given area and how the proposed extension affects each. Based upon the facts presented in this case, M.U.D.'s proposed extension unnecessarily traverses a substantial Aquila main to serve an area immediately adjacent to existing Aquila infrastructure.

² Application No. P-0005 Order at 9.

Orderly development by its very nature denotes a level of organization necessary to avoid confusion and to ensure the system as a whole will function safely, efficiently and serve its intended purpose. The Commission finds no significant safety concern in this case. However, to find that such overlapping mains under these circumstances constitute orderly development could create a potential labyrinth of natural gas infrastructure and render the requirement of orderly development meaningless.

Based upon the above, the Commission finds that M.U.D.'s service to Southern Pines will not contribute to the orderly development of natural gas infrastructure as a whole. Although no single factor is necessarily determinative of public interest, the Commission finds that M.U.D.'s failure to show that its service would contribute to the orderly development of the natural gas infrastructure as a whole is sufficient on its own under these circumstances to find that M.U.D.'s proposed service is not in the public interest. Therefore, it is unnecessary to address the remaining factors.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that M.U.D.'s proposed gas main extensions to serve the planned Southern Pines subdivision are not in the public interest.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of July, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director